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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 500

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

Ref: ENF-L

December 7, 1999

Kevin Murray, Esq.
Leboeuf, Lamb, Greene & Macrae
1000 Kerns Building
136 South Main
Salt Lake City, Utah 84101

Dear Mr. Murray:

As promised, I am enclosing a draft of the Administrative Order on Consent (the "Consent Order") for remedial investigation/feasibility study ("RI/FS") work at the Richards Flat Tailings Site (the "Site"). Per our agreement, I am sending the document to you early in the process so that you and your client, United Park City Mines Company, may review the terms of the draft Consent Order and, hopefully, feel more comfortable with the negotiation process.

As I have previously indicated to you, the U.S. Environmental Protection Agency ("EPA") believes all the potentially responsible parties should have the opportunity to participate in the RI/FS. Consequently, the Consent Order will be modified to include these other parties in the next draft. Please ensure that your client is aware of that fact. After you and your client have had an opportunity to review this draft of the Consent Order, we will send notice letters and a new draft of the Consent Order to all parties, thus officially commencing a ninety-day negotiation period.

If you have any questions, please give me a call.

Sincerely,

Matthew Cohn
Legal Enforcement Program

Enclosure

cc: Jim Christiansen - EPR-SR
Greg Phoebe - ENF-T



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION [8]

IN THE MATTER OF:)
)
RICHARDSON FLAT TAILINGS)
)
United Park City Mines Company)
Respondent)
)
)
Proceeding Under Sections 104, 122(a),)
and 122(d)(3) of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act as amended)
(42 U.S.C. Sections 9604, 9622(a),)
9622(d)(3)).)
)

U.S. EPA Docket
No. _____

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and United Park City Mines Company ("Respondent"). The Consent Order concerns the preparation of, performance of, and reimbursement for all costs incurred by EPA in connection with a remedial investigation and feasibility study ("RI/FS") for the Richardson Flat Tailings Superfund Site (the "Site"), located near Park City, Utah, as well as recovery of past response costs.

II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the EPA Region 8 Director of the Superfund Remedial Response Program, Office of Ecosystem Protection and Remediation (the "Director") by EPA Delegation No. 14-14-C.

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Director to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon EPA and shall be binding upon Respondent, its agents, successors, assigns, officers, directors and principals. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent or of the facility or Site shall alter Respondent's responsibilities under this Consent Order.

5. The Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and the Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site or facility, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility, by conducting a feasibility study; (c) to recover response and oversight costs incurred by EPA with respect to this Consent Order; and (d) to recover past response costs.

7. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS, with the exception of the baseline risk assessment performed by EPA, and for a record of decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this

Consent Order shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

V. FINDINGS OF FACT

8. The Site (CERCLIS ID # UTD980952840) is located approximately three and one-half miles northeast of Park City, Summit County, Utah. The Site is a former mine tailings impoundment and covers approximately 160 acres immediately southeast of the junction of U.S. Highway 40 and Utah Highway 248. The Site is situated in a broad valley and is surrounded by low hills. The area is primarily grassland. The tailings pile is located directly adjacent to Silver Creek. Silver Creek is a tributary to the Weber River and is classified by the State of Utah as a cold water fishery. Some wetlands are positioned between the tailings pile embankment and Silver Creek. The area is relatively isolated with little development within a one mile radius. Tailings were first placed at the Site prior to 1950. Tailings disposal continued intermittently through 1982 with several modifications and enlargements of the pile occurring. Since 1982, the site has been inactive, though United Park City Mines has taken various actions intended to mitigate any potential impacts on human health and the environment including fencing the Site and covering the tailings pile with clean soil.

9. Heavy metals, including arsenic, cadmium, lead, and zinc, are present in tailings at the Site, as well as in sediments in the wetlands bordering Silver Creek, surface water within the on-site irrigation ditch, and in ground water beneath the Site. Silver Creek contains elevated levels of heavy metals, though the exact impact of the Site on Silver Creek still remains to be established. The presence of hazardous substances at the Site has been documented in various EPA investigations, including the Site Inspection Analytical Results Report for Richardson Flat Tailings (Ecology and Environment, 1985) and the Removal Assessment Final Report (Ecology and Environment, 1993). Maximum on-site concentrations found in all investigations prior to 1994, compiled in the Preliminary Public Health Assessment Addendum for Richardson Flat Tailings (ATSDR, 1994), include the following:

<u>Contaminant</u>	<u>Media</u>	<u>Maximum Concentration</u>
Arsenic	Tailings	3,600 parts per million
	Surface Water	2,326 parts per billion
Cadmium	Tailings	250 parts per million
	Surface Water	289 parts per billion
Lead	Tailings	31,300 parts per million
	Surface Water	22,100 parts per billion
Zinc	Tailings	33,800 parts per million
	Surface Water	49,100 parts per billion

10. The primary contaminant migration pathways for the Site, include, but are not limited to: (1) release to surface water and discharge to Silver Creek; (2) release to ground water and discharge

of that ground water to Silver Creek or local wells; and (3) direct contact with tailings, contaminated soils, or contaminated sediments. Releases to surface water and ground water have been repeatedly documented.

11. The heavy metals found at the Site are known to cause a variety of health effects in humans and in animals. In humans, lead is known to cause cognitive defects in young children. Arsenic is a known carcinogen. However, of most concern at the Site is the effect of heavy metals on water quality in Silver Creek. Silver Creek does not meet water quality standards established by the State. The levels of heavy metals in Silver Creek, specifically zinc, are hazardous to cold water fish such as trout and limit their reproduction. These metals may also have adverse effects on aquatic and terrestrial food chains.

12. In accordance with Section 105 of CERCLA, the Site was originally proposed to the National Priorities List (NPL) on June 24, 1988. Due to scoring issues and comments received during the public comment period, the Site was removed from consideration in February 1991. Using the revised Hazard Ranking System (Update 12), the Site was re-proposed to the NPL on February 7, 1992.

13. Respondent for this Consent Order is United Park City Mines Company.

14. Respondent is the owner of the Site and, at various times, produced and disposed of the hazardous substances found on the Site.

15. No prior response or enforcement actions have been taken at the site other than investigation.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

16. The Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

17. Wastes and constituents thereof at the Site, identified in paragraph 9 are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under section 104(a)(1) of CERCLA.

18. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

19. Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

20. Respondent is a responsible party under sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

21. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. Section 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. Sections 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. Section 9622(a).

VII. NOTICE

22. By providing a copy of this Consent Order to the state, EPA is notifying the state of Utah that this Consent Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Consent Order.

VIII. WORK TO BE PERFORMED

23. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Order, and before the work outlined below begins, the Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Consent Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person(s)' technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Consent Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent. During the course of the RI/FS, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

24. Respondent shall conduct activities and submit deliverables as provided by the attached RI/FS Workplan (the "Workplan"), which is incorporated by reference, for the development of the RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, and guidances referenced in the Workplan, as may be amended or modified by EPA. The general activities that Respondent is required to perform are

identified below, followed by a list of deliverables. The tasks that Respondent must perform are described more fully in the Workplan and guidances. The activities and deliverables identified below are developed as provisions in the Workplan and shall be developed as provisions in the sampling and analysis plan, and shall be submitted to EPA as provided. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the Workplan and sampling and analysis plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time. For the purposed of this Consent Order, day means calendar day unless otherwise noted in the Consent Order.

A. Task I: Scoping. EPA determines the site-specific objectives of the RI/FS and devises a general management approach for the Site, as stated in the attached Workplan. Respondent shall conduct the remainder of scoping activities as described in the attached Workplan and referenced guidances. At the conclusion of the project planning phase, Respondent shall provide EPA with the following deliverables:

1. Sampling and Analysis Plan. Within sixty (60) days of the effective date of this Consent Order, Respondent shall submit to EPA the sampling and analysis plan. This plan shall consist of a field sampling plan ("FSP") and a quality assurance project plan ("QAPP"), as described in the Workplan and guidances. If EPA disapproves of or requires revisions to the sampling and analysis plan, in whole or in part, Respondent shall amend and submit to EPA a revised sampling and analysis plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.
2. Site Health and Safety Plan. Within sixty (60) days of the effective date of this Consent Order, Respondent shall submit to EPA the site health and safety plan. Following approval or modification by EPA, the RI/FS work plan and the sampling and analysis plan are incorporated by reference herein.

B. Task II: Community Relations Plan. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondent shall provide information supporting EPA's community relations programs.

C. Task III: Site Characterization. Following EPA approval or modification of the work plan and sampling and analysis plan, Respondent shall implement the provisions of these plans to characterize the Site. Respondent shall complete site characterization within seventeen (17) months of EPA approval or modification of the sampling and analysis plan. Respondent shall provide EPA with analytical data within forty-five (45) days of each sampling activity, in a electronic format (i.e., computer disk) showing the location, medium and results. Respondent shall notify EPA in writing within 7 days of completing field activities. During site characterization, Respondent shall provide EPA with the

following deliverable, as described in the Workplan:

1. Technical Memorandum on Modeling of Site Characteristics. Where Respondent proposes that modeling is appropriate, within 150 days of the initiation of site characterization, Respondent shall submit a technical memorandum on modeling of site characteristics, as described in the Workplan. If EPA disapproves of or requires revisions to the technical memorandum on modeling of site characteristics, in whole or in part, Respondent shall amend and submit to EPA a revised technical memorandum on modeling of site characteristics which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

D. Task IV: Draft Remedial Investigation Report. Within seventy-five (75) days of receipt, Respondent shall submit a draft remedial investigation report consistent with the Workplan and sampling and analysis plan. If EPA disapproves of or requires revisions to the remedial investigation report, in whole or in part, Respondent shall amend and submit to EPA a revised remedial investigation report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

E. Task V: Treatability Studies. Based on the current information available on the Site, as well as knowledge from other similar sites, treatability studies may not be required. However, if EPA determines, based on information collected during the RI, that treatability studies are required, Respondent shall conduct treatability studies and will provide EPA with the following deliverables:

1. Identification of Candidate Technologies Memorandum. This memorandum shall be submitted within one year of the effective date of this Consent Order. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole or in part, Respondent shall amend and submit to EPA a revised technical memorandum identifying candidate technologies which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

2. Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within ninety (90) days thereafter, Respondent shall submit a treatability testing statement of work.

3. Treatability Testing Work Plan. Within thirty (30) days of submission of the treatability testing statement of work, Respondent shall submit a treatability testing work plan, including a schedule. If EPA disapproves of or requires revisions to the treatability testing work plan, in whole or in part, Respondent shall amend and submit to EPA a revised treatability testing work plan which is responsive to the directions in all EPA comments, within thirty (30) days of

receiving EPA's comments.

4. Treatability Study Sampling and Analysis Plan. Within forty-five (45) days of the identification of the need for a separate or revised QAPP or FSP, Respondent shall submit a treatability study sampling and analysis plan. If EPA disapproves of or requires revisions to the treatability study sampling and analysis plan, in whole or in part, Respondent shall amend and submit to EPA a revised treatability study sampling and analysis plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

5. Treatability Study Site Health and Safety Plan. Within thirty (30) days of the identification of the need for a revised health and safety plan, Respondent shall submit a treatability study site health and safety plan.

6. Treatability Study Evaluation Report. Within sixty (60) days of completion of any treatability testing, Respondent shall submit a treatability study evaluation report as provided in the Workplan and work plan. If EPA disapproves of or requires revisions to the treatability study report, in whole or in part, Respondent shall amend and submit to EPA a revised treatability study report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

F. Task VI: Development, Screening and Comparative Analysis of Alternatives. Respondent shall develop a limited range of waste management options that will be developed, screened, and evaluated as provided in the Workplan. During this analysis of alternatives, Respondent shall provide EPA with the following deliverables:

1. Memorandum on Remedial Action Objectives. Within thirty (30) days of receipt of EPA's baseline risk assessment, Respondent shall submit a memorandum on remedial action objectives.

2. Memorandum on Development, Screening, and Comparative Analysis of Alternatives. Within ninety (90) days of submittal of the memorandum on remedial action objectives, Respondent shall submit a memorandum summarizing the development, screening and comparative detailed analysis of remedial alternatives, including an alternatives array document as described in the Workplan. If EPA disapproves of or requires revisions to the Memorandum in whole or in part, Respondent shall amend and submit to EPA a revised Memorandum which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

3. Draft Feasibility Study Report. Within thirty (30) days of EPA approval of the Memorandum on Development, Screening, and Comparative Analysis of Alternatives, Respondent shall

submit a draft feasibility study report which reflects the findings in EPA's baseline risk assessment. Respondent shall refer to Table 6-5 of the RI/FS Guidance for report content and format. If EPA disapproves of or requires revisions to the draft feasibility study report in whole or in part, Respondent shall amend and submit to EPA a revised feasibility study report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments. The report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

25. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Respondent must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

26. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: sampling and analysis plan, draft remedial investigation report, treatability testing work plan and sampling and analysis plan, and draft feasibility study report. While awaiting EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

27. Upon receipt of the draft FS report, EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.

28. For all remaining deliverables not enumerated above in paragraph 26, Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

29. In the event that Respondent amends or revises a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondent for its costs; and/or seek any other appropriate relief.

30. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondent shall incorporate and integrate information supplied by EPA into the final RI/FS report.

31. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent(s)' deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

32. Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

(a) The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the remedial investigation and feasibility study. Respondent shall provide all relevant information, including information under the categories noted in paragraph 32(a) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

IX. EPA'S BASELINE RISK ASSESSMENT

33. EPA will perform the baseline risk assessment. The baseline risk assessment will be a streamlined human health/ecological risk assessment taking into account the proposed future land use and existing information. Respondent shall support EPA in the effort by providing various information to EPA as outlined above. The major components of the baseline risk assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

34. EPA will provide, after review of the Respondent's site characterization summary, sufficient information concerning the baseline risks such that the Respondent can begin drafting the feasibility study report and the Memorandum on Remedial Action Objectives. This information will normally be in the form of two or more baseline risk assessment memoranda prepared by EPA. One memorandum will generally include a list of the chemicals of concern

for human health and ecological effects and the corresponding toxicity values. Another should list the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the baseline risk assessment. The public, including the Respondent, may comment on these memoranda. However, the Agency is obligated to respond only to significant comments that are submitted during the formal public comment period.

35. EPA will make good faith efforts to provide a draft baseline risk assessment to Respondent no later than ninety (90) days after EPA acceptance of the RI report as final. After EPA responds to any significant comments from the Respondent, EPA will release the BRA to the public at the same time it releases the final RI report. Both reports will be put into the administrative record for the Site. EPA will respond to all significant comments on the memoranda or the baseline risk assessment that are resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

X. MODIFICATION OF THE WORKPLAN

36. If at any time during the RI/FS process, Respondent identifies a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within 20 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables.

37. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and the state immediately. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Workplan, EPA shall modify or amend the Workplan in writing accordingly. Respondent shall perform the Workplan as modified or amended.

38. EPA may determine that in addition to tasks defined in the initially approved Workplan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the Workplan for this RI/FS. EPA may require that the Respondent perform these response actions in addition to those required by the initially approved Workplan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondent shall confirm its willingness to perform the additional work in writing to EPA within 7 days of receipt of the EPA request or Respondent shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the

Workplan or written Workplan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

XI. QUALITY ASSURANCE

39. Respondent shall assure that work performed, samples taken and analyses conducted conform to the requirements of the Workplan, the QAPP and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures.

XII. FINAL RI/FS, PROPOSED, PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

40. EPA retains the responsibility for the release to the public of the RI/FS report. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

41. EPA shall provide Respondent with the final RI/FS report, proposed plan and record of decision.

42. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondent must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent may establish a community information repository at or near the Site, to house one copy of the administrative record.

XIII. PROGRESS REPORTS AND MEETINGS

43. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

44. In addition to the deliverables set forth in this Consent Order, Respondent shall provide to EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Consent Order during that month, (2) include all results of sampling and tests and all other data received by the Respondent, (3) describe work planned for the next two months with schedules relating such

work to the overall project schedule for RI/FS completion and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

45. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's behalf, during implementation of this Consent Order, shall be submitted to EPA in the subsequent monthly progress report as described in Section XII of this Order. EPA will make available to the Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

46. Respondent will orally notify EPA at least 15 days prior to conducting significant field events as described in the Workplan or sampling and analysis plan. At EPA's oral or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondent in implementing this Consent Order. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

47. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor pursuant to this order; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans.

48. The Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. Section 2.20., provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. Section 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondent. Respondent agrees not to assert confidentiality claims with respect to any data

related to Site conditions, sampling, or monitoring.

49. In entering into this Order, Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the state or Respondent in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any EPA-approved work plans or sampling and analysis plans. If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

50. If the Site, or the off-site area that is to be used for access or is within the scope of the RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order, Respondent will obtain, or use its best efforts to obtain, Site access agreements from the present owner(s) within sixty (60) days of the effective date of this Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and the Respondent or its authorized representatives, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for the Respondent, perform those tasks or activities with EPA contractors, or terminate the Consent Order in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Consent Order, Respondent shall perform all other activities not requiring access to that site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, Respondent agrees to indemnify the U.S. Government as specified in Section XXVI of this Order. Respondent also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondent pursuant to this paragraph.

XV. DESIGNATED PROJECT COORDINATORS

51. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent and EPA designate in writing:

- (a) Three copies of documents to be submitted to EPA should be sent to:

Jim Christiansen, Richardson Flat Tailings Project
Coordinator,
Superfund Remedial Section, SEPR-SR
US EPA, Region VIII,
999 18th Street, Denver, CO, 80202-2466.

(b) Documents to be submitted to the Respondent should be sent to [include number of copies]:

[Name, Title,
Organization,
Street, City, State, Zip Code].

52. On or before the effective date of this Consent Order, EPA and the Respondent shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the state, and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

53. EPA and the Respondent each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

54. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the National Contingency Plan, to halt any work required by this Consent Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

55. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the Workplan.

XVI. OTHER APPLICABLE LAWS

56. Respondent shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with section 121 of CERCLA.

XVII. RECORD PRESERVATION

57. All records and documents in EPA's and Respondent's possession that relate in any way to the Site shall be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondent shall acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Respondent shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Respondent shall, at no cost to EPA, give EPA the documents or copies of the documents.

XVIII. DISPUTE RESOLUTION

58. Any disputes concerning activities or deliverables required under this Consent Order, excluding the baseline risk assessment, for which dispute resolution has been expressly provided for, shall be resolved as follows: If the Respondent objects to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondent shall notify EPA's Project Coordinator in writing of its objections within 14 days of receipt of the disapproval notice or requirement. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent certified mail, return receipt requested. EPA and the Respondent then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondent may request a determination by the Director. The Director's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If the Respondent does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

59. Respondent is not relieved of its obligations to perform and conduct activities and submit deliverables on the schedule set forth in the Workplan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Consent Order.

XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES

60. For each day that the Respondent fails to complete a deliverable in a timely manner or fails to produce a deliverable of acceptable quality, or otherwise fails to perform in accordance with the requirements of this Consent Order, Respondent shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondent is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless,

penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.

61. Respondent shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. Section 3717. Respondent shall further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

62. Respondent shall make all payments by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

63. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Tailings Site
U.S. Environmental Protection Agency
STE 500 (8ENF-T)
999 18th Street
Denver, CO 80202-2466

64. For the following major deliverables, stipulated penalties shall accrue in the amount of \$1,000 per day, per

violation, for the first seven days of noncompliance; \$3,000 per day, per violation, for the 8th through 14th day of noncompliance; \$5,000 per day, per violation, for the 15th day through the 30th day; and \$25,000 per day per violation for all violations lasting beyond 30 days.

- 1) An original and any revised sampling and analysis plan.
- 2) An original and any revised remedial investigation report.
- 3) An original and any revised treatability testing work plan, if required.
- 4) An original and any revised treatability study sampling and analysis plan, if required.
- 5) An original and any revised feasibility study report.

65. For the following interim deliverables, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance; \$1,000 per day, per violation, for the 8th through 14th day of noncompliance; \$3,000 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$25,000 per day per violation for all violations lasting beyond 30 days.

- 1) Technical memorandum on modeling of site characteristics, if required.
- 2) Summary of RI data,
- 3) Identification of candidate technologies memorandum.
- 4) Treatability testing statement of work, if required.
- 5) Treatability study evaluation report, if required.
- 6) Memorandum on remedial action objectives.
- 7) Memoranda on development, screening, and detailed comparative analysis of alternatives.

66. For the monthly progress reports, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first week of noncompliance; \$800 per day, per violation, for the 8th through 14th day of noncompliance; \$1,000 per day, per violation, for the 15th day through the 30th day; and \$5,000 per day, per violation, for all violations lasting beyond 30 days.

67. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVIII herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution,

no penalties shall be paid.

68. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require re-submission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

69. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Consent Order, including but not limited to conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Consent Order.

70. If Respondent submits any major or interim deliverable to EPA early or on time, EPA will make good faith efforts to provide formal comments no later than one calendar month from the due date of the deliverable. If Respondent submits any major or interim deliverable to EPA after the due date, EPA may not attempt to meet such time restraints for comments.

XX. FORCE MAJEURE

71. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondent and of any entity controlled by Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that the Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order or the financial difficulty of Respondent to perform such work.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the Remedial Project Manager or, in his or her absence, the Director, within 48 hours of when the Respondent knew or should have known that the event might cause a delay. Within five business days thereafter, Respondent shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to

public health, welfare or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

73. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to section XXVII of this Consent Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

74. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondent on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in section XVIII of this Consent Order. In any such proceeding, to qualify for a force majeure defense, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of paragraph 72.

75. Should Respondent carry the burden set forth in paragraph 74, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

XXI. REIMBURSEMENT OF PAST COSTS

76. Within 15 days of the effective date of this Order, Respondent shall remit a certified or cashiers check to EPA in the amount of \$_____, as previously demanded in the RI/FS Special Notice Letter dated _____, together with interest that has accrued thereon at the rate of interest specified for the Hazardous Substances Superfund under CERCLA section 107(a), for all past response costs incurred by the United States in its conduct of response actions at the Site from _____ [date] to _____ [date].

77. Respondent shall make payment by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

78. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Tailings Site
U.S. Environmental Protection Agency
STE 500 (BENF-T)
999 18th Street
Denver, CO 80202-2466

79. A copy of the check should be sent simultaneously to the EPA Project Coordinator.

XXII. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

80. Following the issuance of this Consent Order, EPA shall submit to the Respondent on a periodic basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this RI/FS. Response costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondent's implementation of the requirements of this Consent Order and activities performed by the government as part of the RI/FS and community relations, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, Site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, costs of performing baseline risk assessment, and costs of redoing any of Respondent's tasks. Any necessary summaries, including, but not limited to EPA's certified Agency Financial Management Systems summary data (SPUR Reports), or such other summary as certified by

EPA, shall serve as basis for payment demands.

81. Respondent shall, within 30 days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of: the date payment of a specified amount is demanded in writing; or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in section 107(a) of CERCLA.

82. Respondent shall make payment by forwarding a certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the site name, the EPA Region and SSID NUMBER 08-94, and the EPA docket number for this action, and shall be sent to:

Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail:

Mellon Bank
3 Mellon Bank Center
ROOM#153-2713
Pittsburgh, Pennsylvania 15253

or other such address as EPA may designate in writing or by wire transfer to:

ABA-021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

83. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Tailings Site

U.S. Environmental Protection Agency
STE 500 (8BNF-T)
999 18th Street
Denver, CO 80202-2466

84. Copies of the transmittal letter and check should be sent simultaneously to the EPA Project Coordinator.

85. Respondent agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondent shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Consent Order.

XXIII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

86. EPA reserves the right to bring an action against the Respondent under section 107 of CERCLA for recovery of all response costs including oversight costs, incurred by the United States at the Site that are not reimbursed by the Respondent, any costs incurred in the event that EPA performs the RI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site.

87. EPA reserves the right to bring an action against Respondent to enforce the past costs and response and oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed pursuant to section XIX of this Consent Order, and to seek penalties pursuant to section 109 of CERCLA, 42 U.S.C. Section 9609.

88. Except as expressly provided in this Consent Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

89. Following satisfaction of the requirements of this Consent Order, Respondent shall have resolved its liability to EPA for the work performed by Respondent pursuant to this Consent Order. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this Site, or activities arising pursuant to section 121(c) of CERCLA.

XXIV. DISCLAIMER

90. By signing this Consent Order and taking actions under this Consent Order, the Respondent does not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondent in this Consent Order shall not be considered an admission of liability and is not admissible in evidence against the Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondent retains its rights to assert claims against other

potentially responsible parties at the Site. However, the Respondent agrees not to contest the validity or terms of this Consent Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XXV. OTHER CLAIMS

91. In entering into this Consent Order, Respondent waives any right to seek reimbursement under section 106(b) of CERCLA. Respondent also waives any right to present a claim under section 111 or 112 of CERCLA. This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA. Respondent further waives all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

92. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

93. Respondent shall bear its own costs and attorneys fees.

XXVI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

94. Respondent shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Consent Order, including a margin for cost overruns. Within 15 days after the effective date of this Consent Order, Respondent shall fund the financial instrument or trust account sufficiently to perform the work required under this Consent Order projected for the period beginning with the effective date of the Consent Order through _____. Beginning _____, and on or before the 15th calendar day of each calendar year quarter thereafter, Respondent shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Consent Order projected for the succeeding calendar year quarter.

95. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under the Consent Order for the upcoming quarter, Respondent shall provide written notice to EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

96. (a) Prior to commencement of any work under this

Consent Order, Respondent shall secure, and shall maintain in force for the duration of this Consent Order, and for two years after the completion of all activities required by this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$ 1.0 million dollars, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$1.0 million per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

(b) Respondent shall also secure, and maintain in force for the duration of this Consent Order and for two years after the completion of all activities required by this Consent Order the following:

- i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.
- ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of this Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondent, in furtherance of this Consent Order.

(d) If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Consent Order, and annually thereafter on the anniversary of the effective date of this Consent Order, Respondent shall provide to EPA certificates of such insurance and a copy of each insurance policy.

97. At least 7 days prior to commencing any work under this Consent Order, Respondent shall certify to EPA that the required insurance has been obtained by that contractor.

98. The Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized

representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Consent Order.

XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

99. The effective date of this Consent Order shall be the date it is signed by EPA.

100. This Consent Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing. Project Coordinators do not have the authority to sign amendments to the Consent Order.

101. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order.

XXVIII. TERMINATION AND SATISFACTION

102. This Consent Order shall terminate when the Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondent's obligation to comply with Sections XVII, XXIII, and XXV of this Consent Order.

103. The certification shall be signed by a responsible official representing the Respondent. The representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

BY: _____ DATE: _____
(Respondent) Title

BY: _____ DATE: _____
Dale Vodehnal, Director
Superfund Remedial Response Program
Office of Ecosystem Protection and Remediation
U.S. Environmental Protection Agency, Region VIII
